

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	
)	
EDWARD YOVELLA,)	DIVISION OF WATER
)	POLLUTION CONTROL
RESPONDENT)	CASE NUMBER WPC207-0225
)	

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TN Division Of Water
Pollution Control

RESPONDENT'S PETITION FOR REVIEW

Comes now the Respondent, Edward Yovella, and pursuant to Tennessee Code Annotated §§ 69-3-109, 115, and prays a review of the Director's Order and Assessment filed by the Division of Water Pollution Control on October 10, 2007, and served upon Respondent on October 12, 2007. With regard to this Petition for Review, the Respondent says:

1. The Respondent does not challenge the identity, address, or process served upon himself nor the jurisdiction of the Director in the appropriate case to seek remedy for violations of Tennessee Code Annotated § 69-3-101 *et seq.*, the Water Quality Control Act (hereinafter referred to as the "Act").

2. Respondent denies that he has in any regard violated the Act.

3. Respondent denies that the ditch or wet water stream described in paragraph VI is either an "unnamed tributary" of Byram's Creek or are "waters of the state."

4. Respondent admits that he was contacted in September 2005 with regard to the construction of a roadway he had made on his property.

5. Respondent admits meeting with personnel of the Environmental Field Office

to discuss their opinions that he was then in violation of their regulations.

6. Respondent admits that he removed a portion of the drainage piping he had previously installed with regard to his roadway and that he placed seed and straw near the construction to prevent erosion.

7. Respondent admits that prior to August 14, 2007, he changed the drainage system with regard to the roadway as a result of the severe drought existing at and near this location.

8. Respondent admits that on or after August 22, 2007, he was issued a Notice of Violation and was requested to remove a portion of the drainage system installed by him.

9. It is the contention of the Respondent that that drainage system was not in violation of the Act prior to being removed in August 2007; but that if it was, Respondent has fully complied with the request of the division personnel to remove the drainage pipe that he had installed.

10. Respondent denies that the investigation has resulted in the division incurring any damages and certainly not \$389.04.

11. Respondent denies that he is in violation of any of the cited statutes; that he in fact did not cause the drought conditions in East Tennessee; that he in fact did not cause water not to run in the ditch that is of concern to the division; and that even though he did not cause the condition complained of by the division, that he took every action requested by division personnel and informed them that he had done so.

12. Respondent specifically denies that he has violated T.C.A. §§ 69-3-114(a) and created in anywise a nuisance.

With regard to the Order and Assessment, the Respondent states:

1. There was not and is not a base flow to an unnamed tributary of any creek involved in his construction. That fact notwithstanding he has within seven (7) days of being requested changed the drainage system that was in place in an attempt to comply with the request of the division and has notified the division of having done so.

2. Respondent has been able to propose no stream restoration plan, other than to pray for rain, that might "restore" some unnamed tributary to an original condition. There is no flowing water from this site which would otherwise reach Byram's Creek.

3. Respondent, having undertaken and completed all requested actions, knows of no reason to ask for written approval of other actions and knows of no other actions needed, necessary, or even requested by the division.

4. Respondent knows of no actions to be initiated within thirty (30) days or completed within forty-five (45) days which have not already been initiated and completed as requested.

5. Respondent denies owing any civil penalty or assessment and demands a hearing with regard to the assessments set out in paragraph 5 (a), (b), (c), (d), and (e) of the Order and Assessment.

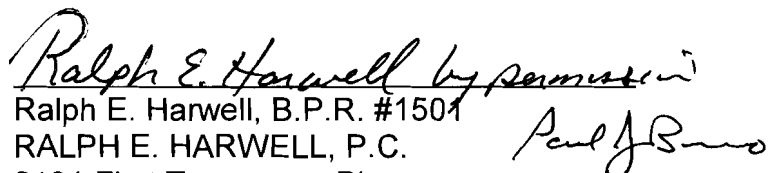
6. Respondent denies and demands a hearing with regard to any damages as set forth in paragraph 6.

Respondent shall continue to conduct his business in accordance with all lawful requests of the State of Tennessee. If for any reason this petition is insufficient or if the State contests the facts as stated in Respondent's Petition, Respondent prays an appeal and a hearing before the Water Quality Control Board in the nature of a trial before the

Board sitting with an administrative law judge.

Respondent prays notice of the date and time for such a hearing sufficiently in advance of the hearing to subpoena necessary witnesses to contest and to prove that the Respondent is not in violation and that, therefore, no remedial actions, assessments, or damages are in order.

Respectfully submitted this 9th day of November 2007.


Ralph E. Harwell, B.P.R. #1501
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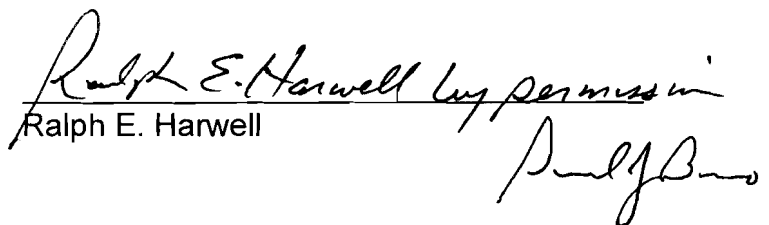
Attorney for the Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Respondent's Petition for Review has been served by hand-delivery to the address as follows:

Paul E. Davis, P.E.
Director of the Division of Water Pollution Control
Department of Environment and Conservation
State of Tennessee
401 Church Street
L&C Annex 6th Floor
Nashville, Tennessee 37243-1534

This 9th day of November 2007.


Ralph E. Harwell